IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO. 855 OF 2005

IN

NOTICE OF MOTIION NO. 3019 OF 2005

IN

BOMBAY CITY CIVIL COURT L.C. SUIT NO. 3374 OF 2005

WITH

C.A.NO. 1005 OF 2005

Smt. Sonubai Vithal Devmane ... Appellant
(Org. Plaintiff)

Versus

Municipal Corporation of Gr.Bombay ... Respondents
(org.Defendants)

WITH

APPEAL FROM ORDER NO. 856 OF 2005

IN

NOTICE OF MOTION NO. 3018 OF 2005

IN

BCCC L.C. SUIT NO. 3373 OF 2005

with

C.A. NO. 1006 OF 2005

Vithal Gopal Devmane ... Appellant
(Org.Plaintiff)

Vs.

Municipal Corpn. of Gr.Bombay Respondents
(Org.Defendants)

Mr. A.Y.Sakhare, Senior Counsel with Mr P.M.Havnur for the Appellant.
Mr. R.A.Malandkar for B.M.C. - Respondent.
Mr. M.S. Menon with Mr. Anil Parab with Mr. M.D.Chavan for the landlord.

CORAM: B.H.MARLAPALLE,J.

DATE : 9th September,2005.

P.C.

1. Both these Appeals arose from the two separate orders passed by the learned Judge of the City Civil Court, Bombay in Notice of Motion No.3018 of 2005 filed in L.C. Suit No. 3373 of 2005 and Notice of Motion No.3019 of 2005 filed in L.C. Suit No.3374 of 2005 respectively. The impugned order is dated 25.8.2005. The prayer for ad-interim relief in both the Notices of Motion has been refused. The Notices of Motion have been directed to be registered by the common order and made returnable on 3.9.2005. It appears that during the pendency of these Appeals,

some portion of the premises was already sought to be demolished and status quo is maintained pending the hearing of these Appeals by the Corporation.

2. The suit property are the Shops Nos. 2 and 3 and notices issued under Section 351 of the B.M.C. Act on 7.4.2005 show that unauthorised extension has been made horizontal in front of Room No.2 with brick wall & A.C. Sheets and plastic sheets roofing admeasuring 12′ x 9′6" with an average height of 9′. Similar structure has been alleged in the notice in respect of Room No.3. The Plaintiffs replied the said notices and the Assistant Commissioner, H-East Ward of the Respondent has confirmed the said notices. The Plaintiffs, therefore, filed two different suits in respect of Room No.2 and Room No.3. For the purpose of ad-interim order, the learned Judge of the trial Court referred to the rival contentions based on the documents annexed to the Plaint and produced by the Respondent. The notice issued under Section 351 itself, prima facie, shows that out of the four rooms facing the main Road i.e. Pandit Jawaharlal Nehru Road, there is no extension in front of Room Nos. 1 and 4. The Room Nos. 2 and 3 were given CTS Nos.2307, 2304 and 2308 respectively. The landlord placed on record before the trial Court the CTS Survey Map and it appears that the Plaintiff also placed

similar Map. The trial Court noted that the map of the year 2001 (existed as on 19.5.2001 and issued on 29.5.2001) indicated no extension in front of the Rooms bearing CS Nos. 2307 and 2308 whereas the same Map issued on 2.11.2002 and prepared on 30.10.2002 has shown extension in front of Rooms bearing CTS Nos. 2307 and 2308. From these documents, the trial Court recorded the prima facie finding that the alleged unauthorised structure came up after May, 2001 and before October 2002. No such unauthorised structure appears to be existing prior to May 2001. This prima facie finding for the purpose of refusal of ad-interim relief cannot be held to be perverse so as to call for interference in these Appeals.

3. The Appeals are, therefore, dismissed in limine.

4. In view of the above, C.A. Nos. 1005 of 2005 and 1006 of 2005 do not survive.

4. Mr.Sakhare, learned Counsel for the Appellants, at this stage prays for continuation of the oral status quo order for one more week. The prayer is rejected.

(B.H.MARLAPALLE,J.)